Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States
October Term, 1997

JERRY PECARO

Petitioner,

VS.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Respondent.

In Petition For Writ of Certiorari To
U.S. 3rd Circiut Court of Appeals
PETITION FOR WRIT OF CERTIORARI

JERRY PECARO
P.O. Box 944
Springfield, NJ 07081
212.803.1977

80 pp

QUESTION(S) PRESENTED

1. Should the state of New Jersey be allowed to continue, to lock into the inner cities, a primarily African-American race and knowingly perpetuate upon these people "Economic Genocide" by:

a. Not providing the housing opportunities for these people in the suburbs;

b. Preventing petitioner Pecaro from providing the requisite affordable housing in the suburbs?

-Civil Rights Act of 1968, Sec. 801 et seq.; 42 U.S.C.A., 3601 et seq.

-Appendix H, pg. 23; Appendix I, pg. 27; Appendix L, pg. 43.

2. Should the State and Federal Judiciary of this country be allowed to ignore the law and violate my constitutional rights and the constitutional rights of all inner city children in need of affordable housing in the suburbs; by continuing to dismiss and or deny hearing this housing issue in a fair trial before a just forum?

-Civil Rights Act of 1968, Sec. '801 et seq.; 42 U.S.C.A., 3601 et seq.;

-Baytree of Inverrary VS. City of Lauderhill, 873 F.2d 1407 (C.A.11 (Fla.) 1989);

-Appendix H, pg. 23; Appendix L, Pg. 43.

3. Should the State of New Jersey be allowed, to continue to set contrived upper limits, to the amount of affordable housing a suburban town might provide and in some cases provide none at all based upon:

a. A set formula which is on its face, invalid;

b. having no basis in reason and;

c. the formula being numerically void and or mathematically incoherent?

-Civil Rights Act of 1968, Sec. 801 et seq.; 42 U.S.C.A., 3601 et seq.;

-Appendix H, pg. 23 ;' Appendix J, pg. 34; Appendix L, pg. 43.

4. Should the state of New Jersey be allowed to damage the business and livelyhood of me the petitioner, Jerry Pecaro, because I so choose to provide this affordable housing; and am willing to take less profit or no profit and build this housing for those in dire need

of said housing, throughout New Jersey?

-42 U.S.C.A., 3601 et seq.; U.S.C.A. Const. Art. 3, 1 et seq.;

-Baytree of Inverrary VS. City of Lauderhill, 873 F.2d 1407 (C.A.11 (Fla.) 1989);

-Appendix H, pg. 23.

5. Should the state of New Jersey be allowed to deny me the opportunity of providing said housing?

-42 U.S.C.A., 3601 et seq.; U.S.C.A. Const. Art. 3, 1 et seq.;

-Baytree of Inverrary VS. City of Lauderhill, 873 F.2d 1407 (C.A.11 (Fla.) 1989)

6. Should the federal courts be allowed to ignore the merits of this case by preventing its day in court, its due process by:

a. summary dismissal action, thereby "shoveling under" and "covering up", this matter due to;

b. political interference, ignorance, and racial animus which;

c. knowingly perpetuates this "Economic Genocide" upon the exigents trapped in the inner cities of New Jersey?

-Civil Rights Act of 1968, Sec. 801 et seq.; 42 U.S.C.A., 3601 et seq.;

-Baytree of Inverrary VS. City of Lauderhill, 873 F.2d 1407 (C.A.11 (Fla.) 1989)

-Appendix K, pg. 42; Appendix M. pg. 47.

7. Should the state judiciary of New Jersey be allowed to ignore federal and state law guaranteeing fair housing even to the extent of politically contrived machinations and phone calls being made by a person (name known to me personally, but withheld) to a certain state appeals court judge and having a decision favorable to me on a housing matter altered, so that I would not prevail. When indeed this matter had already been decided in my favor, but the opinion was now changed to be adverse to my cause; as a result of that phone call?

8. Should the federal highway administration and the state of New Jersey conspire to keep a tract of land out of my control so

that I would not develop the said tract for affordable housing. Even to the extent of the federal highway administration breaking its own regulations and foregoing in a unprecedented case, in terms of size, location and amount to be repaid to the federal highway administration (5,000,000 dollars) on this certain tract of land?

-Civil Rights Act of 1968, Sec. 801 et seq.; 42 U.S.C.A., 3601 et seq.;

-23 CFR 713.306, 307); 42 U.S.C.A., 4601 to 4655;

-Baytree of Inverrary VS. City of Lauderhill, 873 F.2d 1407 (C.A.11 (Fla.) 1989)

-Springfield v. Lewis, 702 F2d.; '[See also Appendix 01

-Quarry Hills VS. Federal Highway Admin. (Dist. Ct. Newark, Appendix 0, Pg. 56, N.J. 89-4208 MTB);

-Appendix N, Pg. 51

LIST OF PARTIES

Note 1

[x] All parties appear in the caption of the case on the cover page.
[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Note 1 An amended complaint that was not allowed to be filed but was submitted as timely to be filed as a matter of course (Rule 15a), has additional parties not in the caption. (Civ. Procedure)

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IN THE
SUPREME COURT OF THIE UNITEDSTATES
OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:
The opinion of the United States Court of appeals appears at Appendix __A__ to the petition and is

[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix __B__ to the petition and is

[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ the petition and is

[ ] reported at; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of thecourt appears at _____
Appendix _____ to the petition and is
[ ] reported at _____ ; or,
[ ] has been desipated for Publication but is not yet reported, or,
[ ] is unpublished.

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 8, 1997.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ date in Application No. A- _____ .

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

[ ] For cases from federal courts:

[ ] The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. A- _____ .

The jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 United States Constitutional Amendment
Section 3601 et seq

Civil Rights Act of 1968, Section 801 et seq.

United States Constitutional Amendment Article 3
Section 1 et seq.

STATEMENT OF THE CASE

The Complaint was filed on April 19, 1996. The party to the complaint did not file an answer and the Petitioner, moved for a default judgment. The district court in Trenton, N.J. mishandled the entry of default judgment as default was already entered by the clerk of the court. (Appendix G, pg. 21)

The Respondent party moved for reinstatement and that motion was granted by Magistrate Hughes, citing amongst other reasons that the court favors a *Trial on the merits*. (Appendix D, Pg. 15)

The Respondent moved to block discovery, disallow Petitioner's filing of an Amended Complaint and have the case summarily dismissed, primarily under the *Younger abstention*. Although Petitioner's Amended Complaint was properly filed as a matter of course under Rules of Civ. P. 15(a) requiring no approval from the court for filing Magistrate Hughes denied the filing and compelled Petitioner to file a motion because this is "America". (Appendix M, pg. 47)

Petitioner Pecaro enjoined the court for two temporary restraining orders; 1.) to stay the eviction from his home and; 2.)to save the land in Bedminster he owned from sheriff's sale, both motions were denied. The Motion to stay the Sheriff's sale on the Petitioner's property in Bedminster, N.J. was misconstrued by the court which issued another denial on the Motion for the Petitioner's home. (Appendix E, pg. 17; Appendix F, pg. 19)

Prior to the decision to dismiss Petitioner's case in the district court, Petitioner Pecaro filed a motion for a change in venue due to illegal political influence based upon advantages given to the New Jersey Attorney General that were improper (a conflict of interest later surfaced June 1997, Appendix K, pg. 42 between Magistrate Hughes, the State of New Jersey, and Baltusrol Golf Club, a Co-Defendant/ Co-Conspirator in Petitioner's Amended Complaint disallowed by Magistrate Hughes). This motion for a change in venue was never addressed by the court. (Appendix K, pg. 42; Appendix M, pg. 47)

The court granted the Respondent's motion and the case was dismissed. (Appendix B, pg. 3) Petitioner appealed the matter to the U.S. Court of Appeals, 3rd. Circuit citing among other issues that the *Younger Abstention* no longer applied if it ever had, because the pending case in the New Jersey State Court had been decided and no appeal had been taken by the Petitioner.

The 3rd Circuit affirmed the district court and the matter is now petitioned for a Writ of Certiorari. (Appendix A, pg. 1)

Due to the summary proceedings in the lower court and the "Hot Potato" opinion by the third circuit court of appeals there was no discovery allowed and no facts put on the record and no discussion of issues involved. Even the Prima Facie facts that the formula used by the state of New Jersey is numerically void and mathematically incoherent was never able to be addressed in a Just forum. In addition, unaddressed is the prima facie unconstitutional fact that the State of New Jersey sets upper limits to the number of units of affordable housing a developer like myself, the petitioner can build in a township; and in some cases, none can be built at all. The State of New Jersey has admitted the upper limits to be their pattern and practice. In fact it is not at all required by law that any municipality must absolutely provide affordable housing in New Jersey.

REASONS FOR GRANTING THE PETITION

1. It should be painfully clear that the reason this case must be heard and sent to trial is to peacefully stop the "Economic Genocide" being heaped upon the peoples who are locked into the inner cities of New Jersey and who thereby are living extinguished lives. This unconscionable action being carried out by the state of New Jersey is based upon ignorance, fear and racial animus. Furthermore, neither this country nor any of its jurisdictions should be allowed to continue such action.

New Jersey law does not compel municipalities to provide affordable housing and after 25 years of judicial review by New Jersey, nothing has changed for those housing exigents trapped in the inner cities. (Appendix H, pg.23)

Bringing this matter to settlement will peacefully alleviate the needless suffering and extinguished lives that the inner city peoples lead because of fear, ignorance and racial animus. Following those three; fear, ignorance and racial hatred; is Not a nation on the right path.

Prior to my legal complaint, no other challenges were made against these discriminatory housing practices in Springfield, N.J.. Had my lawsuit not been filed, no challenge to this practice of housing discrimination in New Jersey would have been forthcoming. These fundamental biases in providing affordable housing in the New Jersey suburbs must not continue.

This flagrant "cover-up" of the rudimentary truths in this case are in direct violation of any moral community and blatantly violative of the rights of those who suffer from this wrongdoing; which the state itself has estimated to be approximately 600,000 needy children and their families. (Appendix H, Pg. 23; Appendix L, pg. 42 Appendix 0, 56)

2. This case is an indictment of not only New Jersey (only the most dishonest would even suggest that this problem does not exist

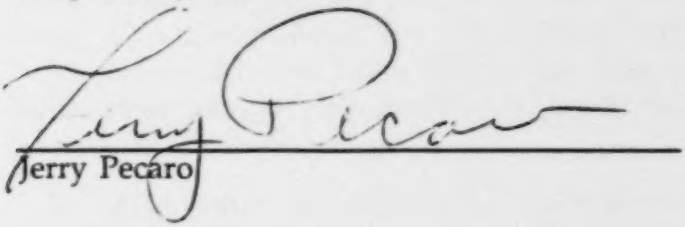
in every state of the U.S.), but of the whole system of the United States; in its legislative, judicial and executive agencies. This prob'em left uncorrected becomes the legacy of not only the U.S. Supreme Court, but of the entire American system.

3. This decision, by the 3rd Circuit Court is in direct violation and conflicts squarely with *Baytree of Inverrary VS. City of Lauderhill,* 873 F.2d 1407 (C.A.11 (Fla.) 1989).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jerry Pecaro

Date: February 14, 1998

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5320

JERRY PECARO

Appellant,

VS.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 96-01870)
District Judge: Honorable Anne E. Thompson

Submitted under Third Circuit LAR 34.1(a)
November 21, 1997

BEFORE: SCIRICA, LEWIS, Circuit Judges,
and POLLAK, District Judge.

JUDGMENT ORDER

After consideration of all contentions raised by the appellant, it is

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* The Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting bv designation.

ADJUDGED AND ORDERED that the judgment of the district court entered on September 19, 1996, be and is hereby AFFIRMED.

Costs taxed against the appellant.

BY THE COURT:

S/Judge Lewis
Circuit Judge

Attest:

S/P. Douglas Sisk
Clerk P. Douglas Sisk
Date: 12-08-1997

Certified as a true copy and issued in lieu of a formal mandate on December 30, 1997.

Teste:

Clerk, U.S. Court of Appeals
For the Third Circuit.

UNITED STATES COURT
DISTRICT OF NEW JERSEY

JERRY PECARO, *Plaintiff,* v. NEW JERSEY COUNCIL OF AFFORDABLE HOUSING, *Defendant.*	Civil No. 96-1870 (AET) Filed: April 25, 1997

ORDER

For the reasons set forth in the Opinion filed herewith,

It is on this day of 25th April, 1997;

ORDERED that defendant's motion to dismiss on abstention grounds be and hereby is granted; and it is further,

ORDERED that plaintiff's motion for leave to file an Amended Complaint be and hereby is denied; and it is further,

ORDERED that plaintiff's motion for class certification be and hereby is denied, and this case is now closed.

S/ Anne E. Thompson
ANNE E. THOMPSON, CHIEF JUDGE

UNITED STATES COURT
DISTRICT OF NEW JERSEY

JERRY PECARO, *Plaintiff,* v. NEW JERSEY COUNCIL OF AFFORDABLE HOUSING, *Defendant.*	Civil No. 96-1870 (AET) OPINION

THOMPSON, CHIEF JUDGE

This matter is before the Court on defendant's motion to dismiss and/or for summary judgment. Plaintiff has filed a motion for leave to file an Amended Complaint and for class certification. The case was denied without oral argument in accordance with Fed. R. Civ. P. 78. For the reasons set forth below, the Court will grant defendant's motion to discuss and deny both plaintiff's motion for leave to file an Amended Complaint and his motion for class certification.

Background

Pro se plaintiff Jerry Pecaro, a real estate developer and a C.P.A., brought this suit against defendant New Jersey Council of Affordable Housing ("the Council") under the Federal Fair Housing Act, 42 U.S.C. § 3601 et seq.

The New Jersey Supreme Court's Mount Laurel decisions held that the New Jersey constitution requires each developing municipality to make possible through its zoning ordinances the development of its fair share of the regional need for low and moderate income housing. See Burlington City N.A.A.C.P. v. Mount Laurel, 67 N.J. 151 (1975)(Mount Laurel I), and Southern

Burlington County v. Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), Defendant Council was created by the New Jersey Fair Housing Act to administer disputes involving exclusionary zoning so as to assure that a municipality meets its New Jersey constitutional obligation to provide a realistic opportunity for affordable housing. The Council designates each municipality's obligation pursuant to a set methodology; that is, the Council's determination of "COAH numbers." The COAH numbers are the Council's determination of municipal fair share obligations to provide low and moderate income housing pursuant to the New Jersey Supreme Court's Mount Laurel decisions, the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329, and the Council's rules, N.J.A.C. 5:93-1 et seq.

Plaintiff alleges that the COAH numbers are "discriminatory racially" and have precluded him "from the opportunity to provide" affordable housing in the Townships of Springfield and Bedminster. Plaintiff further claims that the COAH numbers violate Article V of the United States Constitution, as they constitute a constructive taking of his Bedminster property. Plaintiff seeks declaratory and injunctive relief and monetary damages.

A. State Court Proceedings

Plaintiff previously instituted Mount Laurel builder's remedy law suits in state court against both the Townships of Bedminster and Springfield. On January 26, 1996, plaintiff filed a Complaint in the Law Division of the New Jersey Superior Court, Ocean County, naming the Township of Bedminster as a defendant. Plaintiff filed suit after he failed to overturn Bedminster's denial of a variance application for commercial zoning on property owned by a corporation controlled by plaintiff. Plaintiff claimed that the zoning board denied the use variance application for "racial reasons and not as a matter of zoning." On June 21, 1996, summary judgment was granted for Bedminster and several other defendants by the Honorable Leonard N. Arnold, P.J.S.C. Other defendants to the action remain in the case. Plaintiff filed a motion for leave to file an Interlocutory Appeal of Judge Arnold's decision. The motion was denied on August 9, 1996. Therefore, the Bedminster Mount Laurel litigation continues in the Superior Court, Law Division.

Plaintiff also brought a Mount Laurel law suit in state court against the Township of Springfield and other defendants. This suit involves 165 acres of land in Springfield acquired by the New Jersey Department of Transportation ("DOT"). The DOT leased part of this tract of land to Union County for leaf composing purposes. Plaintiff asserted that he wished to acquire the property in question in order to develop low and moderate income housing on the tract. Plaintiff further alleged that the use of the land for Union County's proposed composting purposes was inconsistent with Springield's unmet fair share Mount Laurel obligation. On September 6, 1996, the Honorable John Pisansky, J.S.C. dismissed plaintiff's Complaint against the township of Springfield. On October 17, 1996, plaintiff appealed this decision to the Appellate Division of the Superior Court of New Jersey. This appeal is still pending.

Defendant has filed a motion to dismiss and/or for summary judgment arguing, inter alia, that plaintiff's Complaint should be dismissed pursuant to the abstention doctine articulated in Younger v. Harris, 401 U.S. 37 (1971). Plaintiff has filed a motion for leave to file an Amended Complaint. Plaintiff has also filed a motion for class certification.

Discussion

I. *Motion for Summary Judgment*

A court may enter summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has satisfied this initial burden, the opposing party must establish that a genuine issue exists. Jersey Central Power & Light Co. v. Lacey Township, 772 F. 2d 1103, 1109 (3d Cir. 1985), cert. denied 475 U.S. 1013 (1986). Not every issue of fact will be sufficient to defeat a motion for summary judgment; issues of fact are genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). It is not enough to simply show that some "metaphysical" doubt exists as to the material facts. Matsushita Electric Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Further,

the opposing party cannot rest upon mere alligations; it must present actual evidence that creates a genuine issue of material fact. Liberty Lobby, 477 at 249 (citing First Nat'l Bank of Arizona v. Cities Service Co., 391 U.S. 253, 290 (1968)). The court must draw all reasonable inferences in the opposing party's favor, and must accept the party's evidence when considering the merits of the summary judgment motion. See Country Floors. Inc. v. A Partnership Composed of Gepner and Ford, 930 F.2d 1056, 1061 (3d Cir. 1991).

In deciding a motion for summary judgment, it is not the court's role to make findings of fact, but to analyze the acts presented and determine if a reasonable jury could return a verdict for the nonmoving party. See Big Apple BMW. Inc. v. BMW of North America. Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 113 S. Ct. 1262 (1993). It is in this light that the Court must undertake an analysis of the facts of this case.

A. Younger Doctrine

Defendant argue that the Court should abstain from deciding this case pursuant to the principals set forth in Younger v. Harris, 401 U.S. 37 (1971), and its progeny. In Younger, the Supreme Court announced an abstention doctrine preventing federal courts from interfering with pending state criminal prosecutions, even where there are allegations of constitutional violations and even though the federal court would otherwise have jurisdiction over the controversy. CHEMERINSKY, FEDERAL JURISDICTION§13.1 at 715-716. The Younger doctrine is based on federalism concerns, particularly the rationale of providing proper deference and respect to state judiciaries. Id. at 717. Since Younger, the Supreme Court has extended this doctrine to require federal courts to abstain from enjoining civil actions where the state is a party, as well as certain actions between private litigants if an important state interest is involved. *See, e.g.* Trainor v. Hernandez, 431 U.S. 434 (1977); Judice v. Vail, 430 U.S. 327 (1977).

In Middlesex County Ethics Comm. v. Garden State Bar

Ass'n, 457 U.S. 423 (1982), the Supreme Court articulated three requirements for the application of the Younger abstention doctrine: (1) the existence of an ongoing state proceeding which is judicial in nature; (2) the implication of important state interests; and (3) an adequate opportunity to raise constitutional challenges in the state proceedings. Id. at 432.

We begin by noting that the uniform application and adjudication of a New Jersey constitutional obligation, the Mount Laurel obligation to zone for affordable housing, is directly at issue here. We find that this constitutes an important state interest. Moreover, there has been an adequate opportunity for plaintiff to raise constitutional challenges and federal claims in the State proceedings. Therefore, the second and third prongs of the Younger standard have been met.

Plaintiff argues that abstention is not warranted in this case, however because the Council was and is not a defendant in the ongoing state proceedings. Despite this fact, we find that the injunctive relief plaintiff seeks would result in a de facto review of the municipal zoning decisions made in the Bedminster and Springfield state court cases. That is, by seeking a ruling on the validity of the COAH numbers, plaintiff in essence is seeking a collateral review of the decisions of the New Jersey Superior Court, Law Division involving the compliance of Bedminster and Springfield with their constitutional obligations to provide their share of affordable housing. We note that Younger abstention is implicated when a federal plaintiff seeks to "annul . . . previous state court judgments or the effect of the judgments." Gwynedd Properties, Inc. v. Lower Gwynedd Tp., 970 F.2d 1195 (3d Cir. 1992).

The Council's methodology for determining municipal fair share has played an integral role in both state court actions. The Council's approval of Bedminster's Mount Laurel compliance efforts through its grant of substantive certification to Bedminster's plan was successfully used as a defense by the Township in the state court

litigation. Likewise, the Council's methodology was adopted by the court in the Springfield suit to establish the Township's fair share obligation. We note that "federal district courts lack subject matter jurisdiction . . . evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding." Blake v. Papadakos, 953 F.2d 68, 71 (3d Cir. 1992) (quoting District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983)).

Here, a declaratory judgment on the validity of the Council's rules and methodology would clearly interfere with the ongoing jurisdiction of the state courts in their review of the Bedminster and Springfield case and "enmesh this Court in the highly complex Mount Laurel regulatory and judicial system." Therefore, because all three prongs of the Younger test are met, we find abstention is warranted in this case.

II. *Motion for Leave to Amend*

Plaintiff has filed a motion requesting leave to file an Amended Complaint. A court has the discretion to grant or deny leave to amend a complaint taking into account a number of factors. Fed. R. Civ. P.15(a). These factors include undue delay, bad faith, previously granted amendments, undue prejudice to the non-moving party, and futility of the cause of action. See Foman v. Davis, 371 U.S. 178, 182 (1962). Especially significant is prejudice to the non-moving party; such prejudice has often been referred to as the "touchstone for the denial of an amendment." Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989) (quotations omitted). Inherent in the concept of discretion is the understanding that there will be occasions on which the court will not exercise its discretion and deny a motion to amend a complaint.

Defendant asserts, and the Court agrees, that amendment to the pleadings would be futile. Plaintiff's Amended Complaint seeks to add numerous new "co-defendants/conspirators" as well as new

claims. However, if plaintiff's motion was granted, abstention would still be warranted for the reasons articulated above. Therefore, the Court will deny plaintiff's motion for leave to file an Amended Complaint.

III. *Motion for Class Certification*

Plaintiff has also filed a motion for class certification. In order for a class to be certified, a plaintiff must prove that the prerequisites of Fed. R. Civ. P.23 are fully satisfied. Seiler v. E.F. Hutton & Co., Inc., 102 F.R.D. 880. 887 (D.N.J. 1984) (Brotman, J.). Rule 23(a) provides the following:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Each of the requirements of Rule 23(a) is mandatory and must be satisfied before class certification can be granted. Alexander v. Gino's. Inc., 621 F.2d 71, 74 (3d Cir. 1980). A class action "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." General Telephone Co. Of the Southwest v. Falcon, 457 U.S. 147, 161 (1982).

We find that plaintiff fails to satisfy Rule 23(a) since as a pro se litigant he cannot fairly and adequately protect the interests of the class. Oxendine v. Williams, 509 F.2d 1045 (4th Cir. 1975). Therefore, plaintiff's motion for class certification will be denied.

Conclusion

In light of the foregoing, the Court finds that defendant's motion to dismiss on abstention grounds will be granted. Plaintiff's motion for leave to file an Amended Complaint will be denied. Plaintiff's motion for class certification will also be denied. An appropriate Order is filed herewith.

Dated: April 23, 1997

PETER VERNIERO, ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendant
New Jersey Council of Affordable Housing

By: William P. Malloy, Deputy Attorney General
Richard J. Hughes Justice Complex, CN 112
Trenton, New Jersey 08625
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JERRY PECARO,	*	
Plantiff,	*	Civil Action
v.	*	Scheduling Order
NEW JERSEY COUNCIL OF AFFORDABLE HOUSING,	*	
Defendant,	*	

WHEREAS, pursuant to Fed. R. Civ. P. 16, a scheduling conference was held before the Honorable John J. Hughes, United States Magistrate Judge on November 14, 1996, in the United States Court House, Trenton, New Jersey; and

WHEREAS, in attendance at the scheduling conference were Jerry Pecaro, Plantiff pro se, and William P. Malloy, Deputy Attorney General, representing defendant New Jersey Council on Affordable Housing; and

WHEREAS, defendant New Jersey Council on Affordable Housing requested that it be allowed it to file a dispositive summary judgment motion prior to the institution of discovery; and

WHEREAS, plaintiff Jerry Pecaro requested that he be allowed to file a proposed amended complaint adding, inter alia, new defendants and a class action count to the complaint, and

WHEREAS, these requests by the parties, as well as others made both in writing and orally at the scheduling conference have been considered and for other good cause shown:

IT is on this 25th day of November, 1996, and for reasons stated on records of Nov. 14, 1996.

ORDERED that defendant New Jersey Council on Affordable Housing may file a summary judgment motion by December 27, 1996, returnable on January 21, 1997, before the Honorable Anne E. Thompson, Chief Judge, U.S. District Court and that plaintiff Jerry Pecaro's brief in response to the motion is due on January 7, 1997; and

IT IS FURTHER ORDERED that plaintiff Jerry Pecaro may file a motion for leave to file a proposed amended complaint by December 27, 1996, before the Honorable Anne E. Thompson, Chief Judge, U.S. District Court returnable on January 21, 1997; and

IT IS FURTHER ORDERED that plaintiff Jerry Pecaro serve the Notice of Motion to file the proposed amended complaint, along with a copy of the proposed amended complaint and all supporting documents, on each proposed defendant he seeks to add to this action by virtue of the proposed amended complaint; and

IT IS FURTHER ORDERED that service of plaintiff's Notice of Motion upon Deputy Attorney General William P. Malloy will be effective service upon all proposed additional State of New Jersey defendants; and

IT IS FURTHER ORDERED that subsequent to a decision of being entered on these two motions, plaintiff Jerry Pecaro will, if necessary, arrange a conference call with Magistrate Judge Hughes and all parties remaining in the case to set deadlines for discovery in this matter and to set any further conditions necessary for the final resolution of this case.

S/John J. Hughes
JOHN J. HUGHES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERRY PECARO,	*Civil Action *No. 96-1870 (AET)
Plantiff,	*
v.	*ORDER *Original Filed *Sept. 19, 1996
NEW JERSEY COUNCIL OF AFFORDABLE HOUSING,	*William T. Walsh
Defendant,	*

This matter having come before the Court by: (1) motion of Defendant to extend time to file an answer, move or otherwise reply and to vacate default for failure to plead, entered June 18, 1996, (docket entry #10); and (2) motion of Plaintiff, pro se, for leave to file an amended complaint and to add defendants, (docket entry #13); and Plaintiff, pro se, having notified the Court, by letter dated August 29, 1996, that he has withdrawn his motion for leave to file an amended complaint and to add defendants; and Plaintiff, pro se, having submitted opposition to Defendant's motion; and Defense counsel indicating that the delay in filing an answer was "caused simply by the work load of the Deputy Attorney General" rather than "any deliberate attempt to secure a tactical advantage" against Plaintiff, pro se, See Defendant's Letter Brief at 3; and Plaintiff, pro se, indicating that Defendant "could have notified the Court in some fashion that it was not going to respond within the time specified by the Rules," and that it "would simply demonstrate unfairness to me

and to those who wait for housing" if this Court grants Defendant's motion, See Plaintiff, Pro Se's Letter Brief In Opposition To Defendant's Motion; and the Court finding that this inadvertent failure to file a timely answer was not caused by any fault of Defendants and that Plaintiff, pro se, will not be unduly prejudiced by the granting of Defendant's motion; and the Court finding that the parties should be entitled to present their cases on the merits; and the Court having considered the matter pursuant to Fed. R. Civ. P.78; and good cause having been shown;

IT IS on this 17th day of September, 1996,

ORDERED that the motion of Defendant to vacate default for failure to plead, entered June 18, 1996, is granted; and it is

FURTHER ORDERED that Defendant's motion for an extension of time to file an answer, move or otherwise reply is granted; and it is

FURTHER ORDERED that Defendant shall file an answer, move or otherwise reply within 20 days of the date of this Order; and it is

FURTHER ORDERED that the motion of Plaintiff, pro se, for leave to file an amended complaint and to add defendants is withdrawn.

S/John J. Hughes
JOHN J. HUGHES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

****

)JERRY PECARO,	*Civil Action No. 96- *1870 (AET *ORDER
Plantiff,	*
	*
v.	*Filed Aug. 27, 1996
	*
NEW JERSEY COUNCIL OF AFFORDABLE HOUSING,	*William T. Walsh *
	*
Defendant,	*
	*

****

This matter is before the court on plaintiff's motion for Temporary Restraining Order and preliminary injunction "to protect plaintiff, his family and business from further harm and irreparable damage."

Through a foreclosure action, plaintiff has been evicted from his house on 307 Northview Terrace, Springfield, New Jersey. He previously filed an application for a temporary restraining order and preliminary injunction to prevent his eviction. After hearing oral argument on August 5, 1996, the Court denied that application in an order dated August 7, 1996.

Plaintiff now seeks a Temporary Restraining Order and preliminary injunction staying in the sheriff's sale of his house. Plaintiff asserts that the sale is scheduled for August 27, 1996. Requests for temporary restraining orders are subject to the same requirements as requests for preliminary injunctions. Tootsie Roll Indus., Inc. v. Sathers. Inc., 666 F. Supp. 655, 658 (D Del. 1987). When considering a motion for injunctive relief, the court must

consider whether the moving party has a reasonable probability of eventual success on the merits, and whether that party will be irreparably injured if relief is not granted. Opticians Ass'n of America v. Independent Opticians of America, 920 F. 2d. 187, 191-92 (3d Cir. 1990). The court should also take into account the public interest, as well as the possibility of harm to other interested parties. Id.

For the reasons set fort at oral argument on August 5, 1996, and in the Court's opinion file August 7, 1996, we conclude that plaintiff has failed to demonstrate that he has a reasonable probability of success on the merits of his claims. The Court therefore will deny plaintiff's application for a Temporary Restraining Order and preliminary injunction.

In light of the foregoing:

It is on this 27th day of August, 1996;

ORDERED that plaintiff's motion for Temporary Restraining Order and preliminary injunction be hereby denied.

S/Clarkson S. Fisher
CLARKSON S. FISHER,
SENIOR JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERRY PECARO,	*Civil Action No. 96- *1870 (AET)
Plantiff,	*ORDER *
v.	*Original Filed *Aug. 27, 1996
NEW JERSEY COUNCIL OF AFFORDABLE HOUSING,	*William T. Walsh *
Defendant,	*

This matter is before the Court on plaintiff's motion for a Temporary Restraining Order and preliminary injunction. On August 5, 1996, the Court heard oral arguments on this matter from plaintiff.

Plaintiff seeks a Temporary Restraining Order and preliminary injunction staying his eviction in the foreclosure action of his home on 307 Northview Terrace, Springfield, New Jersey. Generally, requests for temporary restraining orders are subject to the same requirements as requests for preliminary injunctions. Tootsie Roll Indus., v. Sathers. Inc., 666 F. Supp. 655, 658 (D. Del. 1987): See Rosa v. Resolution Trust Corp., 752 F. Supp. 1231, 1237 (D.N.J. 1990), rev'd on other grounds, 938 F. 2d 383 (3d Cir. 1991); of. Professional Plan Examiners of New Jersey, Inc. v. Lefante, 750 F. 2d 282, 288 (3d Cir. 1984) (TRO becoming preliminary injunction through lapse of time). When considering motion for injunctive relief, the Court must consider whether the moving party has a reasonable probability of eventual success on the merits, and whether

that party will be irreparably injured if relief is not granted. Opticians Ass'n. Of America v. Independent Opticians of America, 920 F. 2d 187, 191-92 (3d Cir. 1990). The Court should also take into account the public interest, as well as the possibility of harm to other interested parties. Id.

Here, plaintiff has failed to carry his burden of proving that he has a reasonable probability of success on the merits. Plaintiff has offered the Court no evidence that a Temporary Restraining Order and preliminary injunction are warranted in this case. Given the extraordinary nature of temporary restraints, the Court is satisfied that plaintiff's motion should be denied.

It is on this 5th day of August, 1996;

ORDERED that plaintiff's motion for Temporary Restraining Order and preliminary injunction be and hereby is denied.

S/Anne E. Thompson
ANNE E. THOMPSON,
CHIEF JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

****

JERRY PECARO,	*Civil Action *No. 96-1870 (AET) *
Plantiff,	*ORDER *
v.	*Filed July 17, 1996 *
NEW JERSEY COUNCIL OF AFFORDABLE HOUSING,	*William T. Walsh * *
Defendant,	* *

****

This matter is before the Court on *pro se* plaintiff's motion for entry of default judgment against defendant New Jersey Council on Affordable Housing. Plaintiff's complaint alleges violations of the Fair Housing Act, 42 U.S.C. § 3604. Entry of default is a prerequisite to entry of default judgment. As the clerk's office has not entered default against the defendant, and default must be entered before a court may grant default judgment, plaintiff's motion is premature.

In light of the foregoing;

It is on this 15th day of July, 1996;

ORDERED that plaintiff's motion for entry of default judgment be and hereby is DENIED, and it is further;

ORDERED that default be and hereby is entered

against defendant New Jersey Council on Affordable Housing.

S/Anne E. Thompson
ANNE E. THOMPSON,
CHIEF JUDGE

NEW JERSEY
THE STAR-LEDGER

Fax: (973) 877-5845
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Fax: (609) 394-0444
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Report: Newark third-worst city for raising kids

By J. Scott Orr
STAR-LEDGER WASHINGTON BUREAU

WASHINGTON - Another ranking of urban woes, another poor showing for Newark, another angry response from the city.

Last year, Money magazine ranked Newark as the Nation's most dangerous city. Today, Zero Population Growth is to release a report that ranks Newark as the third-worst city for children's quality of life.

The reaction from City Hall was angry.

"We don't know where these figures come from, we don't know how these rankings are made," said Pam Goldstein, a spokeswoman for Mayor Sharpe James. "It's just not fair to compare big cities like Newark with affluent suburban communities."

"This is another insult to the people of Newark who are struggling every day to make their city better," Goldstein added.

Of the 219 U.S. cities rated on health, education, economy, crime and environment, Newark ranked 217th, ahead of only Detroit and Gary, Indiana. The other cities at the bottom of the list were St. Louis, Hartford, San Bernardino, Flint, Baltimore, Atlanta and Tampa.

The best cities for children according to the report, were Napierville, Illinois; Overland Park, Kansas; Irvine, California; Piano, Texas; Fargo, North Dakota; Madison, Wisconsin; Sterling Heights, Michigan; Ann Arbor, Michigan; Livonia, Michigan and Sioux Falls, South Dakota.

Three other New Jersey cities also received poor rankings in the report: Elizabeth ranked 144th, Paterson ranked 184th and Jersey

City ranked 190th. The report ranked cities with populations over 100,000 and the largest municipalities in states with no cities of more than 100,000.

Ciro Scalera, executive director of (PLEASE SEE CITIES, PAGE 22).

NEW JERSEY
THE STAR-LEDGER

Best and worst cities for children

The index of 219 cities includes all cities with population over 100,000 and the largest cities from states with no cities over 100,000.

TEN BEST CITIES	RANK
Napierville, Ill.	1
Overland Park, Kan.	2
Irvine, Calif.	3
Piano, Texas	4
Fargo, N.D.	5
Madison, Wis.	6
Sterling Heights Mich.	7
Ann Arbor, Mich.	8
Livonia, Mich.	9
Sioux Falls, S.D.	10

TEN WORST CITIES	RANK
Gary, Ind.	219
Detroit	218
Newark	217
St. Louis	216
Hartford	215
San Bernardino	214
Flint	213
Baltimore	212
Atlanta	211
Tampa	210

NEW JERSEY CITIES	RANK

Elizabeth	144
Paterson	184
Jersey City	190
Newark	217

THE STAR-LEDGER
SOURCE: Zero Population

I N D E X

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MR. BUTLER: Still waiting for a question.
MR. L. JOHNSON: My question is would it be in your judgment fair to say the impact of this building would be approximately one-third that of AT&T on Bedminster?
THE WITNESS: I can't say that. I don't know the uses that will go into the building. I don't know that AT&T is three times bigger, that it has three times more traffic or anything than this building. I don't know that to be the case.
MR. L. JOHNSON: How many people are going to work in 270,000 square feet?
THE WITNESS: Depend on the tenants. Maybe it's computer processing where most of the floor is computers and they only have 20 people who work in the building, I don't know. I can't answer that until there's a tenant in there.
MR. L. JOHNSON: Isn't it fair to say a typical office building has one employee per 250 square feet?
THE WITNESS: I don't know if that's correct. Again it depends what's going in there. If we had a tenant lined up in there, I couldn't tell you without a tenant.
MR. L. JOHNSON: In general is that typical of an office building?
THE WITNESS: Depends where it's located. A lot of factors go into it. I can't say 1 per 250 is accurate or not accurate.
MR. L. JOHNSON: Would 1 in 250 square foot be inaccurate?
THE WITNESS: It's a number, I don't know if it's accurate or inaccurate.
MR. L. JOHNSON: You're a planner. Is it inaccurate?
THE WITNESS: I'm telling you without knowing who is going in that building I have no way of knowing how many people are going to be there. Maybe 1 for 250. Maybe one for every thousand. Maybe one for every 10,000. I don't know. I can't answer your question.
CHAIRMAN METELSKI: Any way they are providing 1,080 parking spaces.
MR. BUTLER: As called for in the ordinance.
CHAIRMAN METELSKI: Which makes certain assumptions about commercial building utilization.

THE WITNESS: It doesn't make assumptions. The variations of parking you may have less people than the ordinance requires. If you went across the states, you would find parking standards are well in excess of what anybody requires for parking. But we have to meet the ordinance whether we use them or not. That's what we're stuck with.

CHAIRMAN METELSKI: Thank you for that information.

MR. L. JOHNSON: So AT&T has approximately 3,500 parking spaces and you're having approximately one-third of that.

THE WITNESS: The ordinance requires that, not our specific use. That's what the zoning ordinance says we have to put in, not what we say we need to supply this building.

MR. L. JOHNSON: If you did have one car for each parking space, would it be fair to say the affordable housing obligation for your office complex wold be one-third that of AT&T?

THE WITNESS: No, that's what the council on housing determines. My understanding that Bedminster through the Hills development has already met their requirement. That they would not have to provide additional affordable housing units.

MR. L. JOHNSON: That's only if we do not put in additional office space.

THE WITNESS: I don't if it is required more affordable housing are needed. Assuming you even did, I don't know why that's a bad thing.

MR. L. JOHNSON: Well, there is an office floor space factor in the affordable housing formula... Is that correct?

THE WITNESS: There is. But as a planning consultant, I'm not saying here. I'm not saying providing affordable housing is bad. Do you?

MR L. JOHNSON: May I get back to another area? You mentioned walking down Janelle Drive and Laomatong Way. I wonder if you could tell me whether you observed or you heard the same kinds of things that I heard when I down there last Friday afternoon at three o'clock?

THE WITNESS: I don't know what you heard.

MR. L. JOHNSON: I was curious to know if we heard the same things.

THE WITNESS: I don't know what you heard.
MR. BUTLER: I object to the question.
THE WITNESS: I don't know what you heard so I can't answer that.

135 Pitt Road
Springfield, NJ 07081-2616
April 26, 1995

Master David Kinsey
Kinsey & Hand
14 Aiken Avenue
Princeton, NJ 08540

Dear Sir:

I am writing to you in opposition to the Springfield affordable housing plan.

My family moved to Springfield in 1971. We moved there from Newark; where we lived during the riots. We chose to move there because we wanted to change our environment for the better, a suburban, safer environment. My family also moved when we could afford to do so.

I got married in 1981. At that time, my husband and I could not afford a house in Springfield. What we wanted was just always out of reach. We rented in other communities, and in 1987, purchased a starter house in a town in Union County. As you know people who bought houses in 1987 mostly took losses when they sold due to the over inflated real estate market at that time. We sold our house at a great loss in 1993, and have been living at the Summit Hill apartments in Springfield until this month. We finally bought our home in Springfield. It was still quite expensive.

We want the community to be as it is. We do not want to subside people who cannot afford to live there, people who cannot maintain the standard of living or the values of the community.

Just because a builder (Jerry Pecaro) could not buy the land he

wanted to develop for his own profit (the quarry which wasn't for sale and wasn't even owned by Springfield, but is in fact owned by Union County) is no reason to take revenge on the town of Springfield.

Maybe some of the town's "do gooders" have forgotten what is was like and why they moved here from Hillside, Newark, Jersey City and other similar areas. Many people have worked very hard and long to be able to afford a home in a community such as Springfield. It isn't right to change the socio-economic stature of a community to satisfy the needs of a few.

As far as the handicapped, wheelchair accessible housing, if we are to proceed in this area, let us do so with a recognized, established, accredited organization with a good track record in this area. Let us not give the town's land, money and support to just anyone.

To my knowledge, there is no low income, affordable housing in Short Hills, and I see no need for it here. People move to towns, neighborhoods and specific streets because they like them. Over time, houses are for sale and people who have the means to support the continued integrity of the community.

For the number of units you are proposing, additional policeman, firemen, sanitation workers and educational services will be required. This will put a strain on the present tax structure. These extra services will require an increase in property taxes which will be passed on to the present homeowners who are already overburdened. These monies will not be paid by the low income families but rather by current residents. May I also remind you that many of Springfield's homeowners are senior citizens who are living on fixed incomes and are already feeling the pressure of higher property taxes. Please put your efforts into helping the people who currently reside in and support the town of Springfield.

People move into this town for the atmosphere that exists now. I strongly urge you to take whatever steps are necessary to maintain and preserve the present character of the Township of Springfield.

Sincerely,

S/Carol Degan
Carol Degan

cc: Judge John Pisansky
Master David Kinsey
NJ Deputy Attorney General H. Edward Gabler
Asst. Counsel for Union County Henry Ogden
Springfield Township Attorney Bruce Bergen

CENTER FOR URBAN POLICY RESEARCH

Mr. Jerry Pecaro
March 6, 1996
POB 944
Springfield, NJ 07081

Re: COAH Number Calculation Procedure
Springfield Township, Union County
Bedminster Township, Somerset County

Dear Mr. Pecaro:

The following data and calculation procedure is in response to communities requesting detailed data used in the New Jersey Council on Affordable Housing (COAH) calculated affordable housing need. The data and procedure are divided into five parts and outputs as explained below. All text references are to enclosed Exhibit 1 - Base Data for COAH Affordable Housing Calculations.

Complete calculation procedures are set forth hereunder.

Part I: Present Need

Part I is involved with the determination of Present Need. The initial calculation of Present Need concerns Indigenous Need which is an indication of local housing deficiency. For those municipalities above the regional average percent deficient housing, their Indigenous Need above the average are assembled into a regional pool. This regional pool is then allocated among municipalities according to their fair share as determined by the three allocation indices of: (1) equalized non-residential value, (2) undeveloped land, and (3) household income difference. Urban Aid cities are excluded from this allocation process. The sum of Indigenous Need and Reallocated Need constitutes Present Need.

Subpart I-A *Indigenous Need* (C)(Result 1) is the smaller of *Indigenous Need (Actual Deficient Housing)* (A) and *Indigenous Need (Capped Deficient Housing)* (B).

Indigenous Need (Actual Deficient Housing) (A) is the result of multiplying *Sub-Regional Multi-Index Need* (A1) by the outcome of dividing *Municipal Single-Index Need* (A3) by *Sub-Regional Single-Index Need* (A2).

Indigenous Need (Capped Deficient Housing) (B) is the result of multiplying *Regional Average Percent Deficiency* (B1) by the *1993 Occupied Housing Estimate* (B2).

Note that a qualifying Urban Aid City has special rules.

Subpart I-B *Reallocated Present Need* (I) (Result 2) is the *Average of the Present Need Allocation Factors* (G) time the *Regional Pool of Excess Deficient Housing Units* (H).

The *Average of the Present Need Allocation Factors* (G) is the average of *The Share of Regional Equalized Non-residential Value* (D), *The Share of Regional Undeveloped (Vacant) Land* (E), and *The Share of Aggregate Household Income Difference* (F).

The Share of Regional Equalized Non-residential Value (D) is derived by dividing *Municipal Non-residential Value* (D1) by *Regional Non-residential Value* (D2).

The Share of Regional Undeveloped Land (E) is derived from dividing *Municipal Undeveloped Land in Growth Areas* (E5) by *Regional Total of Undeveloped Land in Growth Areas* (E6) *The Municipal Undeveloped Land in Growth Areas* (E5) is the sum of *Municipal Undeveloped Land - Planning Area I* (E1) plus *Municipal Undeveloped Land - Planning Area 2* (E2) plus one half of *Municipal Undeveloped Land - Planning Area 3* (E3) plus one half of *Municipal Undeveloped Land - Pinelands Growth Areas (E4)**

The Share of Aggregate Household Income Difference (F) is derived from the average of the *Weighted Income Measure Share* (F7) counted twice plus the *Unweighted Income Measure Share (F8) counted once. Municipal Weighted Income* (F4) is the result from s

subtracting the *Regional Income Floor (lowest municipal Income - $100)* (F2) from *Municipal Median Household Income in 1989* (F1) and multiplying that calculation by *Municipal Households 1993* (F3). *The Weighted Income Measure Share* (F7) is the division of *Municipal Weighted Income* (F4) by the *Regional Total Weighted Income (non-Urban Aid)* (F5). *The Unweighted Income Measure Share* (F8) is the result of subtracting the *Regional Income Floor (lowest Municipal Income -$100)* (F2) from *Municipal Median Household Income in 1989* (F1) and then dividing by the *Regional Total of Unweighted Income (non-Urban Aid)* (F6).

Total Part I - *Present Need* (J) (Result 3) is the sum of Subpart I-A *Indigenous Need* (C)and Subpart I-B *Reallocated Present Need* (I)..

Part II : Prospective Need

Part II consists of procedures to calculate Prospective Need. Regional Prospective Need is the share of projected households in a region that qualify for low- and moderate-income housing. This need is distributed to municipalities based on the same allocation indices used in allocating the regional pool in Part I except for the substitution of equalized nonresidential value change for equalized non-residential value as the first allocation index.

Prospective Need (N) (Result 4) is derived from multiplying the *Regional 1993-1999 Prospective Need* (L) by the *Average of the Prospective Need Allocation Factors* (M).

The Average of the Prospective Need Allocation Factors (M) is the average of *The Share of Regional Undeveloped Land* (E), *The Share of Aggregate Household Income Difference* (F), and *The Share of Regional Equalized Non-residential Value Change* (K).

See above for explanation of (E) *and* (F).

The Share of Regional Equalized Non-residential Value Change (K) is the result of dividing *Municipal Change in Non-residential Valuation* (K1) by *Regional Total Charge in Non-residential Valuation* (K2).

*Note CAFRA follows New Jersey State Development and Redevelopment Plan's area delimitations. Most of the communities of the Hackensack Meadowlands fall into Planning Area 1 except for some of the territories affected by the Hackensack Meadowlands Plan.

Part III - *Present Need* and *Prosp ective Need* constitute the *Total Need* for a municipality.

Total Need (O) (Result 5) is the sum of *Present Need* (J) (Result 3) and *Prospective Need* (N).

Subpart III-A -*Prior Cycle Prospective Need* (P) (Result 6) is computed by multiplying the *Share of Prospective Need to Use* (P2) by *Municipal Prospective Need 1987-93* (P1); then subtracting *Filtering* 1987-93 (P3) after it has been multiplied by 38 and multiplied by the *Share of Filtering and Conversion to Use* (P7); and then subtracting *Conversions 1987-93* (P4) after is has been multiplied by 1.2 and multiplied the *Share of Filtering and Conversions to Use* (P7). The Share of Filtering and Conversions to Use (P7) is the result of dividing the result of multiplying the *Share of Prospective Need to Use* (P2) times *Municipal Prospective Need 1987-93* (P1) by the sum of the *Share of Prospective Need to Use* (P2) times *Municipal Prospective Need 1987-93* (P1) plus *Present Need 1987-93* (P5) plus *Demolitions 1987-1993* (P6). (See Result 7 below)

Subpart III-B -*Demolitions* (Q) (Result 7) is computed from the three year average of *Demolitions (1988-90)* (Q1, Q2, Q3); times the prospective need projection period (6 years), times 1.2 times the *1990 Low-Moderate Income Sub-regional Poor Unit Percentage* (Q4)

Subpart III-C -*Filtering* (R) (Result 8) is the smaller of *Possible Filtering* (R6) and *Pre-Filtering Need* (R7). *Possible Filtering* (R6) is derived from multiplying *Regional Filtering* (R1) by the average of *Municipal Multi-Family Units 1990* (R2) divided by *Regional Multi-Family Units 1990* (R3) [counted twice] plus

Municipal Pre 1940 Units - 1990 (R4) divided by *Regional Pre 1940 Unites - 1990* (R5) [counted twice]. (*Filtering* is always expressed as a negative number since it is a credit.)

Subpart III-D -*Residential Conversion* (S) (Result 9) is the small of *Possible Conversions* (S4) and *Pre-Conversion Need* (S5). *Possible Conversions* (S4) is derived from *Municipal 2 to 4 Family Units (1990)* (S2) divided by *Regional Total of 2 to 4 Family Units 1990* (S3); times *Regional Residential Conversions* (S1). (*Residential Conversion* is always expressed as a negative number since it is a credit.)

Subpart III-E -*Spontaneous Rehabilitation* (T) (Result 10) is the smaller of *Possible Spontaneous Rehabilitation* (T6) and *Pre-Spontaneous Rehabiltation Need* (T7). The exception to this is if (T6) is greater than *Indigenous Need* (C)then *Indigenous Need*(C) is used instead of (T6). *Possible Spontaneous Rehabilitation* (T6) is derived from multiplying *Regional Spontaneous Rehabilitation* (T1) by the average of *Municipal Weighted Income* (T2) divided by *Regional Total Weighted Income (all Municipalities)* (T3) [counted twice] and *Municipal Income (difference from floor)* (T4) divided by *Regional Total of Unweighted Income (all Municipalities)* (T5) [counted twice]. (*Spontaneous Rehabilitation* is always expressed as a negative number since it is a credit.)

Part IV : Pre-credited Need

Part IV incorporate other sources of demand and supply affecting the need. Prio-cycle Prospective Need and Demolitions are added to the Total Need while Filtering, Residential Conversion and Spontaneous Rehabilitation are subtracted from the Total Need. The outcome of the process is Pre-credited Need.

Subpart IV -*Pre-credited Need* (U) (Result 11) is *Pre-Spontaneous Rehabilitation Need* (T7) plus *Spontaneous Rehabilitation* (T) or *Total Need* (O) plus *Prior Cycle Prospective Need* (P) plus *Demolitions* (Q) minus Filtering (R) minus *Residential Conversion* (S) minus *Spontaneous Rehabilitation* (T).

Subpart IV-A -*Reduction* (V) (Result 12) is the smaller of *Maximum Credit from First Cycle* (V4) and *Calculated Need at this Point* (V5). *Maximum Credit from First Cycle* (V4) and *Calculated Need at this Point* (V5). *Maximum Credit from First Cycle* (V4) is ether *COAH Substantive Certification* (V1) or *Court Settlement (or fair Share if less)* (V2) minus *Rehabilitations (or Rehabilitation Estimate for Court Settlements)* (V3) (*Reduction* is always expressed as a negative number since it is a credit.)

Subpart IV-B -*Prior Cycle (Pre-1987) Credits* (W) (Result 13) is the smaller of the *Maximum Credit 1980-1986* (W1) and the *Calculated Need at this Point* (W2) (*Prior Cycle Credits* is always expressed as a negative number since it is a credit.)

Subpart IV-C -*Twenty Percent Cap* (Y) (Result 14) is zero unless *Calculated Need at this Point* (Y2) is greater than *20% of Estimated 1993 Housing Units* (Y1). (*Twenty Percent Cap* is always expressed as a negative number since it is a lessening of need.)

(*Vacant Land Adjustment Community* will be noted if a community received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle, but this former credit has no direct affect on the calculations done here.)

Part V : Calculated Need

Calculated need is a modification of Pre-credited Need. It is realized after subtracting prior-cycle credits, units zoned and/or built, units transferred, rental bonus credits and the impact of the 20 percent cap.

Part V -*Calculated Need* (Z) (Result 15) is *Calculated Need at this Point* (X11) as modified by the *Twenty Percent Cap* (Y).

Norman J. Glickman
Director
Center for Urban Policy Research

EXHIBIT 1 - BASE DATA FOR COAH AFFORDABLE HOUSING CALCULATION

Municipal Data

Municipality Name	Bedminster township
County	Somerset County
Region	3 - West Central

Part I - Present Need

Subpart I-A - Indigenous Need

A1. Sub-Regional Multiple Index Need	672.62
A2. Sub-Regional Single-Index Need	7,780.16
A3. Municipal Single-Index Need	320.62
A. Indigenous Need (Estimated low- and moderate-income households in deficient units) (A3/A2)*A1	27.72
B1. Regional Average Percent Deficiency	0.01800
B2. 1993 Occupied Housing Estimate	3,629.01
B. Indigenous Need (Capped Deficient Housing)(B1*B2)	65.32
Urban Aid City Status	Not Urban Aid

C. Indigenous Need (The Smaller of A or B)

Result 1 **27.72**

Distribution of Need: 1993, 1993-1999

D1. Municipal Non-residential Value	315,684,253
D2. Regional Non-residential Value	19,988,610,266
D. % Regional Equalized Non-residential Value (D1/D2)	**1.57932†**
E1. Municipal Vacant Land - Planning Area 1	0.00
E2. Municipal Vacant Land - Planning Area 2	273.29
E3. Municipal Vacant Land - Planning Area 3	13.57
E4. Municipal Vacant Land - Pinelands Growth Areas	0.00

E5. Municipal Vacant Land in Growth Areas (E1+E2+((E3+E4)/2))		244.07
E6. Regional Total of Vacant Land in Growth Areas		141,599.52
E. %Regional Vacant Area	(E5/E6)	**0.17237**
F1. Municipal Median Household Income in 1989		68,799.50
F2. Regional Income Floor (lowest municipal Income)		31,007.90
F3. Municipal Households 1993		3,629.01
F4. Municipal Weighted Income	((F1-F2)*F3)	137,146,113
F5. Regional Total Weighted Income (non Urban Aid)		8,736,609,810
F6. Regional Total of Unweighted Income (non Urban Aid)		1,821,515
F7. Weighted Income Measure Share	(F4/F5)	1.56979
F8. Unweighted Income Measure Share	((F1-F2)/F6)	2.07473
F. Regional Income Difference	((F7*2)+F8)/3	**1.73810**
G. Present Need Allocation Factor	((D + E + F)/3)	**1.16326**
Subpart I-B - Reallocated Present Need: 1993		
H. Regional Pool of Excess Deficient Housing Units		1,476.51
Total Part I - I. Reallocated Present Need	(G * H)	
	Result 2	**17.18**
Present Need		
J. Present Need	(C+I) **Result 3**	**44.89**

*=Multiply /=Divide

†Bold type indicated information included in calculation flow diagram which follows

UNION

PAGE 45 SUNDAY, JUNE 1, 1997
SUNDAY STAR-LEDGER

Dinner to honor
retiring judge

SPRINGFIELD: The Richard J. Hughes Inn of Court will hold a biennial dinner honoring retiring Judge Herman Michels, presiding judge of the Appellate Division, at the Baltusrol Golf Club Tuesday.

Members of the Inn of the Court, a group of judges and trial lawyers who train younger attorneys, will present a portrait of the late Gov. Richard Hughes to Union County Assignment Judge Edwar Beglin Jr. Hughes was an assignment judge in Union County in the 1950s and a former chief justice of the state Supreme Court. The portrait was donated by Superior Court Judge Christopher Dietz, who worked for Hughes.

Speakers include Hughe's son U.S. Magistrate John Hughes, and New Jersey Supreme Court Justice James Coleman. The even also commemorates the conclusion of the two-year associate training program.

THE STAR-LEDGER, Wednesday, April 14, 1993

Housing advocates hit council's revised figures

Officials respond that the group can only solve part of problem

By IVETTE MENDEZ

The Council on Affordable Housing (COAH) has redefined the state's unmet housing need to cater municipalities while ignoring the plight of thousands of low- and moderate-income housing residents, critics charged yesterday.

But COAH's executive director, Art Bernard, said his group could only be "part of the solution" to the state's housing problem. COAH was attempting to fulfill its mission to help break down exclusionary zoning and to spur the production of new or rehabilitated homes in expanded areas, he said.

The advocates' charges were leveled on the eve of COAH's first public hearing on proposed guidelines would sharply reduce figures that are supposed to reflect the statewide need for affordable housing. The revised figures would be 83,313 units for 1993 through 1999 as compared to 145,707 for the past six-year period.

At a Statehouse press conference, affordable housing advocates said the actual number of households suffering from serious housing problems is about 675,000.

"It's a tough issue politically," said John Payne, a law professor at Rutgers Law School. "It's very much easier to state the opposition to affordable housing than the reasons in favor of it."

Assistant Deputy Public advocate Stephen Eisdorfer, who successfully challenged a COAH regulation just struck down by the state Supreme Court, said COAH's proposed policy does not reflect

reality.

"Our sense is that COAH has gone fairly awry on this one," said Eisdorfer, adding his office would be submitting comments on the proposed rules.

The overall unmet need for affordable housing had been projected at 145,000 units statewide following enactment of the Fair Housing Act in 1985, which also created COAH to divert lawsuits from the courts and into an administrative forum.

The revised lower estimates announced Feb. 3 were designed to be more flexible and realistic, according to COAH. The lower number reflected actual population growth for the past six years and the projected household growth for 1993-1999 based on the 1990 census.

According to COAH, the changes should encourage towns to meet their obligations, which means more affordable housing opportunities will open up.

Diane Sterner, executive director of the Affordable Housing Network of New Jersey, said the COAH numbers erroneously indicate the state's housing situation has improved in the past few years.

But a 1992 study by the state Department of Community Affairs (DCA) showed that about 675,000 households are experiencing serious housing problems, she said.

"This sudden drop in need seems like a miracle. However, we know that in reality the housing problem has gotten worse, not better as these new numbers would suggest," said Sterner. "How can their numbers be so low? The answer is that COAH has created an artificially narrow definition of housing need."

She said the new figures will draw attention from the real

need and make it even more difficult to get resources directed to creating affordable housing opportunities in our communities."

According to the housing advocates, COAH's new definition of housing need primarily includes those households living in physically substandard housing. Not included are the homeless, those who are paying over half of their income for housing and households which are "doubling" or "tripling" up with other families, they said.

According to Sidna Mitchell, COAH spokeswoman, past definitions of housing need did not include the homeless or "cost-burden" households.

"We're not saying that they're not out there," said Bernard. "They are not included because the problems of cost-burden households and of the homeless are not just housing problems. They're societal problems."

Bernard added, "People don't understand that COAH is only part of the solution to the problems of housing in New Jersey... To deal with the thousands who are cost-burden and to deal with the homeless will require a coordination of the public and private sector."

He said he did not know if the council would revise its figures for the need for affordable housing.

"I certainly won't prejudice what the council is going to hear and how they will respond to what they're going to hear," said Bernard.

Public hearings are scheduled for today in Galloway Township in Atlantic County, tomorrow in North Brunswick and April 22 in Morristown.

Housing advocates suggested legal action could be taken if the proposed regulations are not revised to their satisfaction.

Payne, who teaches law at the Newark campus of Rutgers University, said the state Supreme Court's April 1 decision that struck down a COAH regulation sent a welcome "signal" to the housing community that the courts were prepared to take a look at the issue.

The justices said a municipality cannot set aside a portion of low- and moderate-income housing units-built to meet its Mt. Laurel obligations-for local residents and people working in the town. The ruling struck down a rule that allowed town to reserve up to half of their affordable housing units for residents.

Diane Sterner, executive director of the Affordable Housing Network of New Jersey, says the state's housing problem has gotten worse.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERRY PECARO, *Plaintiff,* v. NEW JERSEY COUNCIL OF AFFORDABLE HOUSING, *Defendant,*	*Civil Action * No. 96-1870 (AET) *United States *Courthouse *Nov. 14, 1996 *10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN J. HUGHES
UNITED STATES MAGISTRATE JUDGE

APPEARANCE:

For The Plaintiff:

Jerry Pecaro
Pro Se
P.O. Box 944
Springfield, NJ 07081

For The Defendant:

William P. Malloy, Esq.
Deputy Attorney General
CN 112
Trenton, NJ 08625

Audio Operator:

Dennis Glynn

Transcribing Firm: Writer's Cramp, Inc.
Six Norton Road
Monmouth Jct., NJ 08852

Proceedings recorded by electric sound recording, transcript produced by transcription service.

THE COURT: This is Pecaro vs. New Jersey Council on Affordable Income, 96-1870 (AET). Is it Mr. Pecaro?
MR. PECARO: Yes, Your Honor.
THE COURT: Is that how you pronounce it?
MR. PECARO: Yes, Your Honor.
THE COURT: Okay, great. And Mr. Malloy.
MR. MALLOY: Yes, Your Honor, William Malloy, DAG--
THE COURT: Yeah. How you doing?
MR. MALLOY: --and it's New Jersey Council On Affordable Housing.
THE COURT: And you're Deputy Attorney General?
MR. MALLOY: That is correct.
THE COURT: I got your letter and plan and although you're obviously much younger than I am, they changed the title Magistrate Judge six years ago. I just alert you of that in the future.
MR. MALLOY: Sorry.
THE COURT: No, it's okay. I have no problem. Mr. Pecaro, what do you wanna do in this case?
MR. PECARO: Well, Your Honor, I'd to file the class -- the Amended Complaint.
THE COURT: Well, you're gonna have to file a formal motion to do that, okay.
MR. PECARO: Okay. The Court doesn't want --
THE COURT: Have a seat and I'll-- You guys relax here. This is sort of an informal hearing. Go ahead.
MR. PECARO: The Court doesn't want it to be allowed as a matter of course then. It should be filed as a motion.
THE COURT: Yeah. And the reason, I'll be frank with you -- well, that's why we're trying -- I'm trying to figure out what to do

here. Mr. Malloy has indicated he wants to file a motion, a Dispositve Motion --

MR. PECARO: Correct.

THE COURT: -- and he really probably doesn't take any position and it probably doesn't effect him whether you join other parties or not. Okay. The question is -- and I'm gonna let you -- it's America, you can file a motion -- pleadings are usually liberally granted. There has been inquiry -- I haven't talked to anybody -- but a couple of the proposed Defendants have contacted my Chambers indicating that they would like to oppose any Motion to Amend the Complaint to add those Defendants. Chiefly, I guess, although they didn't say, I guess on futility grounds, you know, that you would have no cause of action against them so there's no sense to even add them as Defendants. You're probably so far here?

MR. PECARO: Absolutely.

THE COURT: Yeah. You've been through, I think some other litigations in connection with this so you know what I'm talking about.

MR. PECARO: Yes, I do.

THE COURT: So I'm trying to figure out what's the best way to manage the case really -- to allow you to do what you want, allow Mr. Malloy to do what he wants and allow any potential new party a form to oppose their entry into this case or some other case, I presume. So, knowing that's where I'm coming from, what do you have to say about the schedule we're gonna set today?

MR. PECARO: I don't have anything, Your Honor. I just wanna state for the Court that we want to make our case. Myself, as an individual pro se and I, representing the class at this point.

THE COURT: What is the class? I'm not sure I know what the class is.

MR. PECARO: The class is a group of people who have basically been stuck in the inner cities due to restrictions by color and due to zoning restrictions and systematic, I would say, scheme that limits the type of construction and development that someone like myself can provide for these people in the affluent areas.

THE COURT: You, yourself are not -- I don't know -- are

you an inner city dweller trapped in the inner city?

MR. PECARO: I was living in the suburbs and then I lost my house due to this protracted litigation.

THE COURT: And where do you live now?

MR. PECARO: I live in various places.

SENATE, No. 795

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1992

By Senator BASSANO

AN ACT requiring the State Department of Transportation to lease certain lands to the County of Union for public use purposes.

BE IT ENACTED *by the Senate and General Assemblyof the State of New Jersey:*

1. The New Jersey Department of Transportation shall lease for public use all that property held by the Department of Transportation in the Houdaille Quarry, approximately 100 acres, located in the Township of Springfield and the City of Summit, both in Union County, the County of Union, State of New Jersey. The lease shall provided that the County of Union shall lease the property for the consideration of $1 per year for a period of 99 years and shall provide that the property shall be used only for conservation and public recreation purposes and other public uses, including leaf composting facilities. The Department of Transportation may enter into negotiations with the governig body of the County of Union to determine any other terms and conditions of the lease.

2. This act shall take effect immediately.

STATEMENT

The Department of Transportation owns approximately 100 acres of Houdaille Quarry, located in the township of Sprinfield and the city of Summit, both in Union County, and has declared this land to be surplus property. This bill requires the department to lease the property to Union County for a period of 99 years for $1 per year. The property

shall be used only for conservation and public recreation purposes and other public uses, including leaf composting facilities.
Requires DOT to lease Houdaille Quarry to Union County for public use purposes.

Springfield Leader

"Your Best Source For Community Information"

Community Newspaper SPRINGFIELD, N.J., VOL. 67 NO. 09-
THURSDAY, DECEMBER 7, 1995 TWO SECTIONS - 50 CENTS

Conspiracy heads the bill during housing hearing

Accusations of impropriety arose during this week's plenary hearing before Judge John Pisansky as plaintiff Jerry Pecaro, representing himself, informed the court that he had subpoenaed state Senate President Donald DiFrancesco to testify concerning his involvement in the case.

Under oath, Pecaro on Monday testified that DiFrancesco co-signed legislation that would allow Union County to purchase the Houdaille Quarry property from the state Department of Transportation for the consideration of $1 while Pecaro was a client with his law firm.

Pecaro, a developer, approached the Quarry Hills Development Corporation to purchase an unused portion of the property to construct affordable housing, only to find that the DOT had leased it to Union County. He and the development company filed a five-count complaint contesting this action.

This bill, Pecaro stated, was part of a larger effort to avoid providing the affordable housing required under New Jersey state law.

DiFrancesco's possible testimony was offered as a "smoking gun" should the court not feel that Pecaro possessed ample evidence to persuade it that the defendants in the case, the governments of Springfield, Union County and the New Jersey DOT, have fostered avoidance of the Mount Laurel laws in Springfield.

Accordingly, the State of New Jersey, through Attorney General Deborah Poritz, moved to quash the subpoena on the grounds that the "Speech or Debate" clause of the New Jersey Constitution prohibits the questioning of a member of the Legislature about the legislative deliberative process in "any other place".

DiFrancesco was not present during the hearing.

Pecaro asserted under oath that he would not question the senator about the legislative process, but instead would focus on the background of his co-sponsoring the bill knowing that it was in direct conflict with the interests of one of his clients.

Pecaro insisted that an attempt to quash the subpoena would hurt his right to prove avoidance to the court; he added that the attorney general could object to any question directed at DiFrancesco deemed objectionable by existing law.

In his case, Pecaro contends that Springfield has been ignoring its obligations to provided low- and moderate-cost housing under the Mount Laurel laws.

Springfield has allowed a minimum of three major land developments to take place, Pecaro stated, without addressing its affordable housing responsibilities. The Park Place, Princess Farm/ Jade Meadows and Springfield nursery properties were equal in acreage to the Houdaille Quarry property that Pecaro wished to purchase to erect such housing.

Pecaro contends that had his lawsuit not been enacted, Springfield would have been able to completely ignore the Mount Laurel mandate. Prior to his complaint, no other challenges were made against the township's exclusionary zoning and had he not raised his complaint, he continued, the obligation would not have been addressed.

Representatives from Union County, in depositions, stated that the land was taken for parklands and for compensation for lands on the Watchung Reservation intruded upon by I-78.

Pecaro pointed out that there already was sufficient park land in the area (in excess of 144 acres) and 70 acres of original quarry tract had been supplied by the DOT in addition to $3 million.

The plaintiff, citing his deposition of county official Armand Fiorletti, claimed that 50-60 acres of the Quarry were presently unused, with the balance of acreage included for no reason other than to frustrate him.

Township attorney Bruce Bergan is expected to render a formal housing plan in 60 days; included is the plan to send 17 housing units to Linden at a cost of $320,000 as compensation for the omission of low-cost housing at the Springfield nursery property.

Based on the evidence included in the transcripts of the hearing, Pisansky is expected to rule on the subpoena quash and, ultimately, make a final ruling on the case.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

****

QUARRY HILLS DEVELOPMENT CORP, a corporation of the State of New Jersey, and JERRY W. PECARO,	*Civil Action *No. 89-4208 (MTB) *
	*O R D E R
Plaintiffs,	*
	*Entered on The
vs.	*Docket
	*on Feb. 22, 1990
UNITED STATES DEPARTMENT OF TRANSPORTATION, NEW JERSEY DEPARTMENT OF TRANSPORTATION and THE COUNTY OF UNION, State of New Jersey,	*William T. Walsh * * * *
Defendants,	* *

****

This matter having been opened to the Court upon the motion of defendants New Jersey Department of Transportation (hereinafter "NJDOT") and the County of Union (hereinafter "Union County") to dismiss the complaint against them for lack of subject matter jurisdiction, and upon the motion of the United States Department of Transportation (hereinafter "USDOT") also to dismiss for lack of subject matter jurisdiction, and the Court having considered the submissions of the parties both in support of and in opposition to the above motions without oral argument, pursuant to Fed. R. Civ. P. 78; and

it appearing that plaintiff Quarry Hills Development Corporat

ion (hereinafter "Quarry Hills") is a corporation of the State of New Jersey with its principal place of business Springfield, New Jersey, and that plaintiff Jerry W. Pecaro (hereinafter "Pecaro"), a citizen of New Jersey, is the president, sole stockholder, and sole director of Quarry Hills (collectively "plaintiffs"); Complaint at ¶ 2; and

it appearing that Quarry Hills purports to be the assignee of a right of first refusal to purchase land which is currently occupied and used by Union County; Id. at ¶¶ 2, 10; and

it appearing that the subject land was initially purchased by NJDOT from Houdaille Industries, Inc. (hereinafter "Houdaille") as part of a larger tract acquired for the construction of U.S. Highway 78 (hereinafter "Route 78") Id. a ¶ 3; and

it appearing that the total purchase price for the entire tract of land was approximately $8.8 million, of which the United States through USDOT paid approximately 90% or $7.9 million, with the State of New Jersey through NJDOT paying the remaining 10%, or approximately $800.000.00; Id. at ¶ 4; and

it appearing that the land which is the subject of this lawsuit was not used for the final highway project, and that this land constitutes approximately 94 acres out of the original 162 acre tract; Id. at ¶ 6; and

it appearing that plaintiffs assert that, pursuant to a regulation of the Federal Highway Administration, NJDOT is required to dispose of the excess land no so used; see Id. at ¶ 7; and

Plaintiffs specifically rely on 23 C. F. R. § 713.306 which provides, in full.

§ 713.306 Excess right-of-way resulting from plan changes.

it appearing that plaintiffs assert that pursuant to a further

regulation of the Federal Highway Administration and state law, NJDOT has improperly conveyed the excess land to Union County without receiving adequate consideration and with remitting to

(a) Prior to final acceptance of a project, a portion of the right-of-way authorized by FHWA [Federal Highway Administration] and acquired by the SHD [State Highway department] may become unnecessary for the highway project. The unneeded portion usually results from plan changes. Right-of-way authorized and acquired to a natural boundary, but not incorporated into the right-of-way at the time of final acceptance of the project, is considered to be in the nature of a plan change.

(b) When the plan change results in excess right-of-way, a separate request for prior approval of disposal need not be submitted.

(C)Where credit to Federal funds is required in accordance with § 713.307 and the determination as to the unneeded right-of-way is made prior to the final acceptance of the project, the disposal shall be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. However, prior to expiration of the specified time period, the SHD may request and the FHWA may approve an extension of time. If the property is not sold within the approve time limit, the cost of acquisition of the unneeded portion must be credited to the project if Federal reimbursement has been made therefore.

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[1] I note as a preliminary matter that while it is undisputed that the highway was opened to the public on August 14, 1986, and obviously, that more than two years have passed since that time, nowhere is it alleged that the determination as to the necessity of the right-of-way was made prior to the final acceptance of the project. See id. Even assuming that this did happen, and that the statute nominally applies to the present facts, as will be seen, jurisdiction will not lie in this Court.

the United States Government part of the required consideration; see Id. at ¶¶ 11, 12; and

it appearing that plaintiffs further assert that NJDOT is obligated to sell the land to Union County and remit the proceeds as described above but that, should NJDOT determine not to sell the land to Union County, NJDOT is still obligated to sell the land at public auction (and remit part of the proceeds to the United States Goverment),

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[2]Plaintiffs specifically rely on N.J.S.A. 27:12-1 which provides that the State Highway Commissioner may sell real estate acquired but not used for state highway improvement to "any municipal corporation or to any public board or commission, for public use" so long as the purchaser pays "not less than the amount paid therefore by the State". See N.J.S.A. 27:12-1(a). I note that while there is no reason that NJDOT would have to sell the land to Union County in particular, plaintiffs appear to have assumed that NJDOT, which presently allows the County to use the land as a leaf composting site, would naturally offer the land to the County for sale. Plaintiffs estimate the required sale price to the County to be approximately $5.1 million. See Complaint at ¶ 12.

Pursuant to 23 C.F.R. § 713.307, plaintiffs further assert that the Federal Highway Administration would be entitled to a reimbursement for 90% of the purchase price, or approximately $4.59 million. Complaint at ¶ ¶ 9, 12. In paragraph 3(a) of their request for relief, plaintiffs thus ask this Court for and order:

> "directing that NJDOT convey the subject excess land forthwith to: (a) the County of Union for a consideration of not less that $5.1 million, of which $4.59 million shall be paid over by the NJDOT to the USDOT as reimbursement pursuant to the rules and regulations of the Federal Highway Administration."

[2] Id. at p. 11, ¶ 3(a). As will is made clear below, I have no occasion to address the merits of these assertions--and in particular the doubtful assumption that plaintiffs have standing to assert these claims on behalf of New Jersey and the United States--in that I have determined that jurisdiction is lacking as to both the federal and state law claims. See pp. 6-8, within.

but that such sale may not take place without first offering the property to the prior owner, which prior owner shall have a right to repurchase the land before the public auction is held; see Id. at ¶ 13; and

it appearing that plaintiffs assert that Quarry Hills is the entity to which NJDOT must offer the land before any public auction is held, inasmuch as Quarry Hills stands in the shoes of the prior record owner, Houdaille, having purchased the right of first

[3] N.J.S.A. 27:12-1 provides that the State Highway Commissioner may elect to sell excess land at public auction instead of conveying it to a public corporation. See N.J.S.A. 27:12-1(c). N.J.S.A. 52:31-1.4, however, provides that the state shall:

> "prior to public auction to dispose of any land and improvements which it has acquired within 10 years of the decision to dispose...notify and provide the owners of record of the property at the time of acquisition the right to repurchase their interest at the current fair market value of that interest..."

See N.J.S.A. 52:31-1.4. Plaintiffs have assumed that this statute, which apparently apples only to "real property or interests therein that have a value of $100,000.00 or less," see N.J.S.A. 52:31-1.3, would apply to the sale at issue here. This flaw in pleading, if it be one, is again an issue I need not reach inasmuch as I have determined

---

[3]that this Court lacks subject matter over the complaint. In any event, plaintiffs have summarized the remainder of the relief they request by asking that this Court, in the even that it does not order NJDOT to sell the land to the County:

> [to] [o]rder...that NJDOT convey they subject excess land forthwith to:...(b) Quarry Hills for a consideration reflecting current fair market value...".

See Complaint at p. 11, ¶ 3(b). I also not that plaintiffs have asked that the sale price of the land be reduced due to damage allegedly inflicted on the land by the operation of the leaf site by the County. Id.

refusal from Houdaille; see Id. at ¶¶ 16, 17; and

the Court first addressing the motion of USDOT to dismiss the complaint for lack of subject matter jurisdiction; and

it appearing that plaintiffs assert that this Court has jurisdiction over USDOT pursuant to 28 U.S.C. § 1331 in that plaintiffs assert that their cause of action "arises under the Code of Federal Regulations as found in the Federal Register 23 CFR § 713.306 and 23 CFR § 713.307" see Complaint at ¶ 1; and

it being the opinion of the Court that plaintiffs are incorrect in this assertion, inasmuch as the statutory authority under which the regulations at issue were promulgated, i.e., the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et esq. ("the Act"), expressly provides that the statute "create[s] no rights or liabilities and shall not affect the validity of any property acquisitions by purchase condemnation", see 42 U.S.C. §§ 4602(a), 4651; and

it being the opinion of that this language has long been

---

[4]I note that in invoking the jurisdiction of this Court, plaintiffs, while managing to cite the "arising under" language of Section 1331 of the Judicial Code, also state that the "matter in controversy exceeds, exclusive of interest and cost [sic] the sum of $10,000". As plaintiffs should well know, the amount in controversy requirement for federal question jurisdiction has long been abandoned, and the allegation of such a threshold is totally irrelevant to this Court's assumption of jurisdiction under Section 1331. See 28 U.S.C. § 1331. Even were I to assume that counsel simply confused the amount in controversy requirement which is still required for diversity jurisdiction under 28 U.S.C. § 1332 with the requirements of Section 1331, it is now the law that the requirement is not $10,000 but $50,000. See 28 U.S.C. § 1332; see also 134 Cong. Rec. S16,286 (daily ed. Oct. 14, 1988).

constructed as foreclosing judicial review over acquisition policies defined in the Act; see e.g., Roth v. United States Dept. of Transp., 572 F.2d. 183, 184 (8th Cir. 1978) ("No subject matter jurisdiction exists to entertain a private cause of action for either equitable or legal relief under the Act". (citations omitted)); see also Barnhart v. Brinegar, 362 F. Supp. 464, 472 (W.D. Mo. 1973) ("Congress intended [42 U.S.C. § 4602 (a)] to preclude judicial review of federal and state agency acquisitions under the real property acquisition practices of Section 301 of the Act [42 U.S.C. 4651]") (noted in Roth, 572 F.2d at 184); and

the Court next addressing the motions of NJDOT and Union County to dismiss the complaint for lack of subject matter jurisdiction; and

it being the opinion of the Court both that the federal basis for subject matter jurisdiction against NJDOT and Union County does not exist (see above) and that any independent relief against NJDOT and Union County under state law cannot be heard in this federal forum, inasmuch as the Eleventh Amendment to the

Constitution of the United States bars federal jurisdiction over suits which seek

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[5]The regulations were clearly promulgated under the authority of 42 U.S.C. § 4651(9) (and several other statutes not relevant here). 42 U.S.C. § 4651(9) is controlled by 42 U.S.C. § 4602(a), which has the effect of prohibiting federal district courts from hearing private causes of action arising under Section 4651. While plaintiffs are correct in their assertion that the majority of cases declining subject matter jurisdiction over claims arising under the Act dealt with cases challenging acquisition procedures and not disposal procedures, I do not consider this an adequate or even meaningful distinction to override the clear Congressional statement that no rights or liabilities were created in private parties under the Act.

relief, either prospective or retroactive, against the State on the basis of state law; see Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 106 (1984); and

it being the opinion of the Court that although the Eleventh Amendment generally does not stand as a bar to private actions against local governments, see Mount Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977); Lincoln County v. Luning, 133 U.S. 529, 530 (1890), where any relief granted against a county under state law would be "partial and incomplete at best" in a situation where the state cannot also be sued as a party, or where the state treasury stands behind the county, the retention of claims is unwarranted, Pennhurst, 465 U.S. at 124;

It is on this 20th day of February, 1990,

ORDERED, that the motion of the United States Department of Transportation to dismiss the complaint for lack of subject matter jurisdiction is hereby granted; and it is further

ORDERED, that the motion of the New Jersey Department of Transportation and the County of Union to dismiss the complaint for lack of subject matter jurisdiction is hereby granted.

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[6]The complaint here asks the Court to order the State through NJDOT to affirmatively sell the land to the County or offer it to Quarry Hills before undertaking a public auction. Obviously without the NJDOT as a defendant, the Court cannot grant the relief requested even were the claim to have merit under the law, a conclusion I do not reach. Retention of the County under these circumstances would be meaningless.

S/Maryanne Trump Barry
MARYANNE TRUMP BARRY
U.S.D.J.